

Commodity Credit Corporation, USDA

§ 1491.21

the FRPP would not be effective because of on-site or off-site conditions.

(c) NRCS will place a higher priority on easements acquired by entities that have extensive experience in managing and enforcing easements.

(d) During the application period, pending offers having appraisals completed and signed by State-certified general appraisers within the preceding one year shall receive higher funding priority by the NRCS State Conservationist. Before funding is released for easement acquisition, the cooperating entity must provide NRCS with a copy of the certified appraisal.

(e) NRCS may place a higher priority on lands and locations that help create a large tract of protected area for viable agricultural production and that are under increasing urban development pressure(s).

(f) NRCS may place a higher priority on lands and locations that link to other Federal, Tribal, or State governments or non-governmental organization efforts with complementary farmland protection objectives (*e.g.* open space, watershed and wildlife habitat protection).

(g) NRCS may place a higher priority on lands that provide multifunctional benefits including social, economic, historical and archaeological, and environmental benefits.

(h) NRCS may place a higher priority on certain geographic regions where the enrollment of particular lands may help achieve National, State, and regional goals and objectives, or enhance existing government or private conservation projects.

(i) NRCS may place a higher priority on farms or ranches that have or will have a greater variety of natural resources protected.

(j) NRCS may place a higher priority on farms or ranches that have a farm succession plan or similar plan established to encourage farm viability for future generations.

(k) NRCS may place a higher priority on the national ranking criteria listed in § 1491.6(a)(1) than State criteria, if the NRCS Chief deems appropriate.

Subpart B—Cooperative Agreements and Conservation Easement Deeds

§ 1491.20 Cooperative agreements.

(a) NRCS, on behalf of CCC, enters into a cooperative agreement with those entities selected for funding awards. Once a proposal is selected by the State Conservationist, the entity must work with the appropriate State Conservationist to finalize and sign the cooperative agreement incorporating all necessary FRPP requirements. The cooperative agreement addresses:

(1) The interests in land to be acquired, including the form of the easements to be used and terms and conditions;

(2) The management and enforcement of the rights acquired;

(3) The role of NRCS;

(4) The responsibilities of the easement manager on lands acquired with the assistance of FRPP; and

(5) Other requirements deemed necessary by NRCS to protect the interests of the United States.

(b) The cooperative agreement will also include an attachment listing the parcels accepted by the State Conservationist, landowners' names, addresses, location map(s), and other relevant information. An example of a cooperative agreement may be obtained from the State Conservationist.

§ 1491.21 Funding.

(a) The State Conservationist, in coordination with the cooperating entity, shall determine the NRCS share of the cost of purchasing a conservation easement.

(b) Under the FRPP, NRCS may provide up to 50 percent of the appraised fair market value of the conservation easement. Entities are required to supplement the NRCS share of the cost of the conservation easement.

(c) Landowner donations up to 25 percent of the appraised fair market value of the conservation easement may be considered part of the entity's matching offer.

(d) For the entity, two cost-share options are available when providing its matching offer.

(1) The entity may provide in cash at least 25 percent of the appraised fair

market value of the conservation easement, or

(2) The entity may provide at least 50 percent of the purchase price in cash, of the conservation easement. This second option may be preferable to an entity in the case of a large bargain sale by the landowner. If this option is selected, the NRCS share cannot exceed the entity's contribution.

(e) FRPP funds may not be used for expenditures such as appraisals, surveys, title insurance, legal fees, costs of easement monitoring, and other related administrative and transaction costs incurred by the entity.

(f) If the State Conservationist determines that the purchase of two or more conservation easements are comparable in achieving FRPP goals, the State Conservationist shall not assign a higher priority to any one of these conservation easements based on lesser cost to FRPP.

§ 1491.22 Conservation easement deeds.

(a) Under FRPP, a landowner grants an easement to an eligible entity with which NRCS has entered into an FRPP cooperative agreement. The easement shall require that the easement area be maintained in accordance with FRPP goals and objectives for the term of the easement.

(b) Pending offers by an eligible entity must be for acquiring an easement in perpetuity, except where State law prohibits a permanent easement.

(c) The conveyance document or conservation easement deed used by the eligible entity may be reviewed and approved by the NRCS National Office and Office of the General Counsel (OGC) before being recorded.

(d) The conservation easement deed must identify the United States as a grantee with rights as set forth in the deed. Among the rights that the United States acquires in each conservation easement is the right to enforce the terms of the easement under specified conditions and the right to assume sole title to the conservation easement should the grantee abandon or attempt to terminate the conservation easement.

(e) As a condition for participation, a conservation plan will be developed by

NRCS in consultation with the landowner and implemented according to the NRCS Field Office Technical Guide and approved by the local conservation district. The conservation plan will be developed and managed in accordance with the Food Security Act of 1985, as amended, 7 CFR part 12 or subsequent regulations, and other requirements as determined by the State Conservationist. To ensure compliance with this conservation plan, the easement will grant to the United States, through NRCS, its successors or assigns, a right of access to the easement area.

(f) The cooperating entity shall acquire, hold, manage and enforce the easement. The cooperating entity may have the option to enter into an agreement with governmental or private organizations to carry out easement stewardship responsibilities if approved by NRCS.

(g) Prior to fund disbursement, NRCS must sign the conservation easement, concurring with the terms of the conservation easement and accepting its interest in the conservation easement deed.

(h) All conservation easement deeds acquired with FRPP funds must be recorded. Proof of recordation shall be provided to NRCS by the cooperating entity.

(i) Impervious surfaces shall not exceed 2 percent of the FRPP easement area, excluding NRCS-approved conservation practices. However, the NRCS State Conservationist may waive the 2 percent impervious surface limitation on a parcel-by-parcel basis, provided no more than six percent of the easement area is covered by impervious surfaces. The NRCS State Conservationist must consider, at a minimum, population density, the ratio of open prime and important soil versus impervious surfaces on the easement area, and parcel size when deciding whether to waive the two percent limitation. All FRPP easements must include language limiting the amount of impervious surfaces within the easement area.

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